REMARKS

This paper is responsive to a ***non-final*** Office action dated March 29, 2010. The present action follows an Appeal Brief in which Applicant's arguments were persuasive relative to all appealed-from rejections of the pending claims. All rejections were withdrawn and the present non-final rejection followed in which claims 1-26 have been indicated allowable and new grounds of rejection have been entered relative to claims 27-33 and 36-41. Allowable claims are **amended** to place such claims in condition for allowance and new rejections of the remaining claims are **traversed**.

Allowable Subject Matter

Applicants appreciate the indication of allowable subject matter. In particular, the Office has indicated that claims 1-26 are allowable if rewritten to overcome a rejection under 35 U.S.C. § 101. Relative to § 101, the Office has indicated that an amendment to recite a "non-transitory computer readable medium" (rather than merely as a "computer readable medium") would obviate the rejection. Applicants have so amended claim 1. The amendment is in keeping with guidance provided by the Office in January of 2010 in which the Under Secretary Kappos states:

1. that consistent with the Office's obligation to give claims their broadest reasonable construction and in view of the Federal Circuit's 2007 decision in *In re Nuijten*, claims directed to a computer readable medium may be viewed as encompassing a signal *per se*;

2. that such claims may be amended to narrow scope to cover only statutory embodiments by adding the limitation "non-transitory"; and

3. that such amendment does not typically raise the issue of new matter, even when the specification is silent as to non-transitory and signal *per se* embodiments.

Subject Matter Eligibility of Computer Readable Media, 1351 OG 212 (2010). Consistent with the foregoing, and solely to clarify that the present claims are not intended to cover a transitory signal *per se*, Applicants have amended independent claims 1 and 27 to recite the limitation "non-transitory". Accordingly, claims 1-26 are allowable and a notice to that effect is respectfully requested. For like reasons, withdrawal of the § 101 rejection as to claims 27-29 is also appropriate and Applicants respectfully request such withdrawal.

Specification

The Office objects to the specification, indicating that "antecedent basis" is lacking for the term "computer readable medium." Without acquiescing in the propriety of such objection, but rather in view of the Office policy document identified above, it is clear that no issue of new matter exists. Accordingly, Applicants have amended the specification to include in the specification a paraphrase of allowable claim 1. The paraphrase includes the antecedent, "non-transitory computer readable medium," and withdrawal of the objection is now proper.

Claim Rejections – 35 U.S.C. § 103

Claims 27-33 and 36-41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,442,686 to McArdle et al. (hereinafter "*McArdle*") in view of WO 99/05814 naming Dickinson et al. (hereinafter "*Dickinson*") and US 6,618,747 to Flynn et al. (hereinafter "*Flynn*"). With respect, the Office's theory of obviousness proposes to successively amalgamate (first *Dickinson* to *McArdle*, then *Flynn* to the purported combination of *Dickinson* and *McArdle*) components or operations that are inconsistent with the teachings of the very references it seeks to combine. For example, in hypothecating the *McArdle-Dickinson-Flynn* combination upon which its rejection necessarily rests, the Office ignores the fact that *McArdle* is premised on a configuration in which a Policy Management Agent intercepts email (as an SMTP proxy along a path to an organization's SMTP gateway) and makes a binary (pass or reject) decision whether a given message, including all of its recipient address codings, can be passed to the SMTP gateway for delivery. This all or nothing decision is at the very essence of *McArdle's* SMTP proxy solution since, by definition, an SMTP proxy conveys, unadulterated, simple mail transfer protocol (SMTP) session traffic between an SMTP client and an SMTP service. No capability exists to rewrite the recipient address codings of a proxied SMTP session and, indeed, there is simply no need or benefit to do so given the purpose of *McArdle's* configuration, which is to ensure that a client (in transacting an outbound SMTP message) complies with the set of crypto policies implemented by an organization. *McArdle's* design goal is clear. It is to pass fully compliant messages and to reject any message that fails to fully comply.

For background, and since the Office has apparently not yet sought to properly construe terminology relative to *McArdle's* SMTP proxy solution, Applicant points out that an SMTP

proxy is a specialized Mail Transfer Agent (MTA) that, passes simple mail transfer protocol (SMTP) sessions through to other MTAs without using the store-and-forward approach of a typical MTA. *See generally*, http://en.wikipedia.org/wiki/Transparent_SMTP_proxy (Wikipedia, referencing a definitional source, circa 2002).

Accordingly, when the Office mates up with Flynn the pass-or-reject design of *McArdle's* SMTP proxy configuration as a front-end to *Flynn's* notification and retrieval system to facilitate verified delivery by recipient-specialized HTTP call addresses, it necessarily modifies *McArdle*'s configuration to destroy its principal of operation as a SMTP proxy and seeks to imbue the combined system hypothecated by the Office with capabilities that are neither disclosed nor suggested by *McArdle* or *Flynn* and that in no way follow from any factually established shortcoming or need of either system. Instead, the Office uses Applicant's own disclosure and/or claims as template to guide a new configuration that necessarily changes a fundamental operating principal of *McArdle's* SMTP proxy. In short, the Office both engages in impermissible hindsight and proposes a modification to *McArdle* that renders the *McArdle's* configuration unsatisfactory for its intended purpose (as a pass-or-reject SMTP proxy) or changes its principle of operation as an SMTP proxy to instead operate as the policy based secure package delivery facility such as disclosed and presently claimed by Applicant.

McArdle and *Flynn* cannot be combined in the way proposed by the Office without destroying the operating principal of *McArdle's* SMTP proxy, therefore no *prima facie* case of obviousness has been made and Office reliance on disclosure of *Dickinson* does not change this fundamental **legal error**. Withdrawal of the § 103 rejections is respectfully requested.

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Summary

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In summary, claims 1-33 and 36-41 are in the case. All claims are believed to be allowable over the art of record, and a Notice of Allowance to that effect is respectfully solicited. Nonetheless, if any issues remain that could be more efficiently handled by telephone, the Examiner is requested to call the undersigned at the number listed below.

Respectfully submitted,

David W. O'Brien, Reg. No. 40,107
Attorney for Applicant(s)
(512) 338-6314 (direct)
(512) 338-6300 (main)
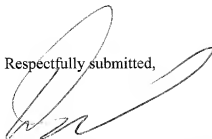(512) 338-6301 (fax)

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